

IN RE:	.	Case No. 19-07235
	.	Chapter 7
CUMMINGS MANOOKIAN, PLLC,	.	
	.	
Debtor.	.	
.	
BRIAN CUMMINGS,	.	Adv. Case No. 23-90036
	.	
Plaintiff,	.	
v.	.	
	.	701 Broadway
BRETTON KEEFER, JEANNE BURTON,	.	Nashville, Tennessee 37203
and AFSOON HAGH,	.	
	.	Wednesday, August 30, 2023
Defendants.	.	11:38 a.m.
.	

APPEARANCES:

APPEARANCES CONTINUED.

APPEARANCES (Continued):

For Bretton Keefer and
Afsoon Hagh:

Spragens Law PLC
By: JOHN T. SPRAGENS, ESQ.
311 22nd Avenue North
Nashville, TN 37203
(615) 983-8900

For Jeanne Burton:

Thompson Burton PLLC
By: PHILLIP G. YOUNG, JR., ESQ.
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1 (Proceedings commence at 11:38 a.m.)

2 THE CLERK: Case 23-90036, Cummings v. Keefer.

3 THE COURT: All right. Let me go ahead and get
4 appearances.

5 MR. SPRAGENS: Good morning, Your Honor. John
6 Spragens on behalf of Ms. Hagh and Mr. Keefer.

7 MS. TIPPING: Good morning, Your Honor. Elizabeth
8 Tipping here on behalf of Brian Cummings who's here with me
9 today.

10 MR. YOUNG: Your Honor, Phillip Young on behalf of
11 the trustee.

12 THE COURT: Okay. And we are here, Mr. Spragens, on
13 your motion to dismiss.

14 MR. SPRAGENS: Yes, Your Honor.

15 MS. TIPPING: Your Honor, may I address a procedural
16 issue before we start argument? We -- it might significantly
17 cut this proceeding short. We object to the defendant's
18 presenting or relying on any evidence outside of what's in the
19 complaint. And without that evidence, they're not going to be
20 able to succeed on this motion.

21 The reason for our objection is that this Court
22 issued your order on May 25 setting this evidentiary hearing,
23 and in that order, the Court directed the exhibit list and
24 witness list be filed by August 16th. The counsel for the
25 defendants has not filed a witness or exhibit list, and we

1 believe they should be precluded from presenting any evidence
2 that they did not identify ahead of time.

3 THE COURT: Okay.

4 MR. SPRAGENS: That's right, Your Honor. We did not
5 file a witness or exhibit list because we intend to rely on the
6 papers, and I was just hoping to argue the motion without
7 presenting evidence today. This is a Rule 12(b)(1)/12(b)(6)
8 motion, so -- and a reliance on extraneous evidence may not be
9 permissible anyway.

10 MS. TIPPING: Your Honor, if they're relying on
11 outside evidence, there is no arbitration provision for us to
12 be discussing. The documents that counsel attached to the
13 motion were not attached to the complaint and are not in the
14 record at this point.

15 THE COURT: Okay.

16 MR. SPRAGENS: Well, Your Honor, they were referred
17 to in the complaint, and the Court can take judicial notice of
18 a document that is integral to the complaint. So I'm happy
19 to -- I don't have that citation in front of you, but I feel
20 very confident that that's good law in the Sixth Circuit.

21 THE COURT: Okay. Well, we're going to go ahead and
22 proceed with the motion.

23 Anything from the trustee as a --

24 MR. YOUNG: No, Your Honor.

25 THE COURT: Okay.

1 MR. SPRAGENS: Thank you, Your Honor. Also, as a
2 preliminary matter, I would note that the plaintiffs just
3 uploaded their exhibits within the last 25 minutes or so, so I
4 didn't receive the exhibits until I was sitting back there. So
5 we would object to them using those exhibits, contravening the
6 local rules of this court which I've been learning so much
7 about over the last couple of years myself.

8 THE COURT: Okay. We'll get to that if they try to
9 use their exhibits that were just uploaded.

10 MR. SPRAGENS: Okay. Thank you, Your Honor.

11 We ask the Court to dismiss this adversary case, the
12 complaint, the amended complaint in this case for lack of
13 subject-matter jurisdiction and for failing to state a claim,
14 so Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil
15 Procedure or, alternatively, to compel the parties to
16 arbitration and stay this proceeding.

17 The entirety of this whole dispute that's now in
18 front of this Court arises from an attorney-client contingent
19 fee agreement that was signed originally between Cummings
20 Manookian and Mr. Keefer and subsequently signed between
21 Mr. Cummings at his new firm and Mr. Keefer. Mr. Cummings
22 drafted that agreement, at least in some form, he and
23 Mr. Keefer both signed that agreement, and then they assigned
24 an amended contract some years later.

25 This is a contract dispute, and the contract is

1 crystal clear, as we recited on Page 3 of the brief, with
2 respect to the contract that was referred to in the amended
3 complaint and that we would ask the Court to take judicial
4 notice of. There is a binding arbitration clause. It spells
5 out that "Any dispute between the parties to the contract"
6 cannot be resolved -- "that cannot be resolved between us must
7 first be taken to mediation for a good-faith attempt at
8 resolving the dispute, and if mediation does not completely
9 resolve the dispute, any ongoing disputed issues must be
10 submitted for final disposition by an agreed-to arbitrator for
11 binding arbitration." And it also says, "Consequently, neither
12 the client nor the attorneys in this attorney-client
13 relationship can file litigation over or about any alleged or
14 real dispute within the attorney-client relationship."

15 Mr. Cummings drafted that language and had his client
16 sign that language, and now -- and have both of them sign it
17 again. Cummings Manookian signed that language. Hagh Law --
18 Ms. Hagh eventually signed that language as well. And the
19 agreement is clear that any disputes relating to fees must be
20 mediated, and if mediation fails to resolve the dispute, it
21 must be taken into binding arbitration.

22 THE COURT: Is that the exact term of that provision,
23 or does it just reference attorney-client relationship issues?

24 MR. SPRAGENS: It says "any alleged or real dispute
25 within the attorney-client relationship."

1 THE COURT: Okay. And how would you define attorney-
2 client relationship?

3 MR. SPRAGENS: Fees are typically -- fees and costs
4 are one of the first things that arises in a dispute between an
5 attorney and a client.

6 THE COURT: Right. Between an attorney and a client.
7 What about between attorney and attorney? Would that be
8 covered under your idea of what attorney-client relationship
9 means?

10 MR. SPRAGENS: Certainly -- so yes, under the
11 language that was drafted and signed here by all the attorneys
12 and the client in this proceeding. It says, "Should any
13 dispute arise within this attorney-client relationship," and
14 then it goes on and says, "neither the client nor the attorneys
15 in this attorney-client relationship can file litigation over
16 or about any alleged or real dispute within the attorney-client
17 relationship."

18 This attorney-client relationship is governed by
19 contract. The contract includes contingency fee award,
20 recovery of costs. It includes a provision about what happens
21 when an attorney withdraws. It includes a provision about what
22 happens when a client discharges the attorney. So the entire
23 nature of the attorney-client relationship is spelled out in
24 that contingent fee agreement.

25 So yes, my view is that all of the issues that

1 Mr. Cummings is seeking to litigate are -- they're really a
2 contract dispute between him and his client. He contends that
3 his client should have paid him a portion of the fee in the
4 case that was resolved. And his client, obviously, doesn't
5 feel the same way. So he has a dispute with his client about
6 Mr. Cummings' entitlement to attorneys' fees.

7 His client's position is that he withdrew from the
8 representation, so I don't owe you a fee. You're entitled to
9 recover your costs. It's all pursuant to the terms of the
10 contract. Mr. Cummings' position is that he was forced to
11 withdraw from the representation and, therefore, is still
12 entitled to some portion of the fee.

13 Fundamentally, this is a dispute about a contract
14 between an attorney and a client and the client making the
15 choice to pay one attorney and not the other. I think that --

16 THE COURT: And I don't have this document, correct?

17 MR. SPRAGENS: It is an exhibit to our motion. And
18 under that, because, you know, it's filed, I believe you can
19 take judicial notice of it.

20 THE COURT: But you did not upload your witness and
21 exhibit list per the Court's order and instruction.

22 MR. SPRAGENS: I'm sorry, Your Honor. I didn't
23 understand that we were required to reupload exhibits that were
24 filed in support of the motion. I thought it was if we were
25 putting on evidence in this courtroom, that we would need to

1 have a sponsoring witness to authenticate that evidence.

2 So in my view, it's routine; you know, courts decide
3 motions to dismiss without hearings all the time. There's no
4 reason that the Court can't take judicial notice of a contract
5 that was referenced in the complaint and supplied in the motion
6 to dismiss.

7 THE COURT: Right. I can take judicial notice of the
8 contract, but that has nothing to do with authenticating or
9 relying on anything within the contract. There is a contract.
10 So firstly --

11 MR. SPRAGENS: Thank you, Your Honor. Mr. Cummings
12 is now trying to get around the language in the contract by
13 creating this into -- creating this dispute between attorneys
14 and maybe alleging some sort of common law. It's very hard to
15 tell from the amended complaint what the causes of action are
16 here. There's a reference to the attorney-client agreement,
17 and then there's a reference to unjust enrichment. There's no
18 separately delineated cause of action pled in the complaint.

19 But of course, where there's a contract governing a
20 relationship, there are no, you know, common law causes of
21 action that can displace the terms of the contract. This is a
22 contract dispute. And the money that's at stake here was
23 Mr. Keefer's property. And Mr. Cummings is asserting an
24 entitlement to some of Mr. Keefer's property. His entitlement
25 is completely and totally derived from the contract with

1 Mr. Keefer.

2 Every attorney who is presently involved in this
3 agreed to arbitrate any dispute arising from that contract, and
4 there's a strong federal policy in favor of arbitration, which
5 we cite extensively in our brief. Arbitration agreements
6 should be construed and given full force and effect. There was
7 an arbitration agreement here. It was drafted by the attorney
8 who later brought the case.

9 And so now, Mr. Cummings cannot invent federal
10 subject-matter jurisdiction for this Court by converting a
11 contract dispute into some amorphous freestanding attorney's
12 lien dispute. There's a contract; he has a dispute with his
13 client about how much money his client owed him as a result of
14 the attorney-client relationship, and that should be dealt with
15 in arbitration pursuant to the terms of the contract.

16 If the Court doesn't have any more questions, I'll
17 let the other side go.

18 THE COURT: Okay. Thank you.

19 MR. SPRAGENS: Thank you, Your Honor.

20 MS. TIPPING: Good morning, Your Honor. Elizabeth
21 Tipping here on behalf of Brian Cummings.

22 Before I dive right in, I would like to address two
23 things that were shared by counsel in argument. The first is
24 the representation that not just Mr. Cummings and Mr. Keefer
25 signed an arbitration agreement, but that such an agreement was

1 signed by all of the attorneys who are involved. I flipped
2 through to make sure I was correct. None of the documents that
3 were attached to defendant's motion -- even if the Court were
4 to look at them with that authentication, none of them include
5 signatures by Ms. Hagh -- Defendant Hagh, which is the second
6 issue that we've raised as reason to deny this motion.

7 The other matter that was raised right near the end
8 of argument was the suggestion or the assertion that
9 Mr. Cummings cannot invent federal subject-matter jurisdiction.
10 And that ties well into the first point in our motion, which is
11 that the federal subject-matter jurisdiction in this case came
12 because this matter involves a bankruptcy, and the bankruptcy
13 trustee is the party who actually removed this case from state
14 court to federal court so that it could ultimately come to this
15 Court.

16 And so we have opposed the motion to dismiss for
17 three reasons. The first is that the Court has -- this Court
18 has exclusive jurisdiction over this matter and that that
19 jurisdiction trumps any arbitration provision that might apply.

20 The second is that Ms. Hagh has no agreement to
21 arbitrate with Mr. Cummings and, therefore, cannot force
22 Mr. Cummings to arbitrate with her.

23 And then finally, we've discussed the fact that both
24 Defendants Hagh and Defendant Keefer have waived arbitration by
25 sitting on their rights for over 15 months. They've known

1 about this claim and this case since early 2022, and the first
2 time that arbitration was demanded was shortly before the
3 filing of this motion in May.

4 We're prepared to --

5 THE COURT: When you say they sat on their rights,
6 they didn't have the dispute. So from that 15 months, tell me
7 that timeline.

8 MS. TIPPING: So I'd be glad to, and we are prepared
9 to present evidence on these points, but I'll discuss it
10 through, and if the Court would like, we'll bring in the
11 exhibits and the witnesses to support it.

12 Mr. Cummings filed his notice of attorney's lien back
13 in 2020. And after the settlement of the underlying case was
14 approved, he asked for a motion for status conference in
15 December of 2021. So at that point, Defendants Hagh and
16 Defendant Keefer knew that this claim had been made or was
17 being made by Mr. Cummings. There was some briefing in the
18 trial court over the course of about a month in which Defendant
19 Hagh demanded that the case had to be filed in a separate
20 action. There was discussion at one point about arbitration,
21 and so from February 1st until March the 8th of 2022, counsel
22 for Mr. Cummings at that time, James Price, sought through
23 written correspondence, which are all attached to our motion
24 and we're prepared to present today, asked Defendant Hagh to
25 advise about Defendant Keefer's views on arbitration,

1 specifically whether this matter ought to be addressed in
2 arbitration or whether Mr. Keefer did not want to do that
3 because of all that arbitration entails.

4 In each of the responses that Defendant Hagh sent
5 back, she claimed she had no idea -- she couldn't understand
6 what was being asked, but she refused to answer any questions
7 about arbitration. We would suggest to the Court that at least
8 through that correspondence, there was an awareness that there
9 was going to be a lawsuit filed, that there was a request about
10 arbitration, and that the defendants specifically and expressly
11 refused to address arbitration.

12 That lawsuit was then filed in March of 2022. We've
13 outlined the issues that arose related to service, up to and
14 including the deputy U.S. marshal attempting to serve Defendant
15 Hagh and being interfered with by Mr. Manookian, who's not a
16 party in this case.

17 And finally, we resolved all of those after we filed
18 a motion for entry of default in February.

19 So if I go -- and the Court -- we discussed in our
20 brief, there are some Sixth Circuit rulings regarding waiver.
21 And one of those, I think, is illustrative or helpful in this
22 case, and that's the case of O.J. Distributing. The court
23 found in that case -- the Sixth Circuit found that the engaging
24 in settlement negotiation period which happened for over a year
25 before the lawsuit was filed, the court included that back-and-

1 forth settlement discussion in their counting of the 15-month
2 delay. There was discussion; there was back-and-forth filing.
3 When that was clearly not going to happen, the plaintiff filed
4 the lawsuit, similarly had trouble with service. And then
5 three months after the lawsuit was filed, the defendant made
6 its first request for arbitration.

7 In that case, the lawsuit was only pending for three
8 months before the defendant sent the letter requesting
9 arbitration. The Sixth Circuit said that entire period of time
10 where the defendant knew that the plaintiff had a claim and did
11 not ask for arbitration should be counted, and because the
12 defendants did not ask for arbitration throughout that time,
13 they had sat on -- I think the phrase they used was "they had
14 slept on their rights" for 15 months and, therefore, had waived
15 arbitration.

16 If I could go back -- unless Your Honor had a
17 question about that waiver, I wanted to --

18 THE COURT: No questions.

19 MS. TIPPING: -- I wanted to address the exclusive
20 jurisdiction piece briefly, although my knowledge of bankruptcy
21 court is this much, and I know Your Honor has much more. But
22 we haven't heard anything about bankruptcy and how the
23 interplay of the arbitration provision and the Bankruptcy Code
24 should be addressed in this particular case. And I think that
25 it's important for the Court to look at that. I think there

1 are a lot of cases out there that talk about what to do when a
2 party wants to compel arbitration indicates that it is in the
3 bankruptcy court.

4 And the courts have instructed bankruptcy courts to
5 determine whether there's an inherent conflict between
6 enforcement of the arbitration provision and the underlying
7 purposes of the Bankruptcy Code. They look at the
8 particularized inquiry into the nature of the claim and the
9 facts of the specific bankruptcy when they are making that
10 determination. And courts are instructed to consider the
11 objectives of the Bankruptcy Code, such as the goal of
12 centralized resolution of claims and protecting parties from
13 piecemeal litigation.

14 And where there is an inherent conflict, the
15 Bankruptcy Code trumps the Federal Arbitration Act. That can
16 exist, and we cited the Court to the Fourth Circuit Court of
17 Appeals ruling that found that there can be an inherent
18 conflict, even when the motion to compel is not seeking to
19 compel a debtor or a trustee to arbitration but another party
20 related because of the impact on the bankruptcy.

21 And so here, we have the trustee, Mr. Cummings, and
22 Defendant Hagh all asking for a piece of the same pot of money,
23 which is the attorneys' fee from the case involving Defendant
24 Keefer. And if one piece of that -- whether it be Mr. Cummings
25 claim just against Mr. Keefer because there's an arbitration

1 provision with Ms. Hagh, or all of Mr. Cummings' claim -- if
2 that has to go to arbitration, we're going to have two forums
3 dividing up the same pot of money but among different sets of
4 parties, and there's no way that that can happen without there
5 being inconsistent rulings.

6 So this is exactly the type of case that presents
7 that conflict that results in the Bankruptcy Code trumping the
8 Arbitration Act, so.

9 THE COURT: So if there wasn't that conflict -- and
10 as you may be aware, there's another adversary that is on
11 appeal that is integral to resolving this case -- if that is
12 resolved and it remains with the Court, which is still yet to
13 be determined whether it does, is there conflict still present
14 if both matters are before the Court or if -- depending on what
15 happens on appeal, it may not be in the same forum or at least
16 in front of the same judge or maybe even the same district.
17 How does that affect your position?

18 MS. TIPPING: I think that what has been raised by
19 the trustee is that because there are related issues, at least
20 with respect to this particular asset, there has been mention
21 to how do we make those two -- these two adversary proceedings
22 work together so that -- because of those commonalities and
23 whether --

24 THE COURT: Is it your position one is before the
25 other, I guess is the easiest way to ask the question. Do you

1 have to resolve one in order to get to the other?

2 MS. TIPPING: I don't --

3 THE COURT: Or are they simultaneous?

4 MS. TIPPING: I think they could be simultaneous. I
5 don't think that one has to be resolved before the other. I
6 think that if -- I suppose if the trustee has no right to that
7 fee, then that would resolve the conflict, so if the decision
8 is made in the other adversary proceeding --

9 THE COURT: That very well could happen.

10 MS. TIPPING: Correct. And if that did, I suppose
11 that would resolve that conflict. But short of that, I think
12 it could be handled together or closely in time.

13 THE COURT: Okay. I interrupted you, so --

14 MS. TIPPING: I apologize.

15 THE COURT: -- please keep going.

16 MS. TIPPING: We are prepared, as I said, to put on
17 the evidence supporting the waiver and addressing the matter
18 concerning Ms. Hagh, although as I've noted, there's no
19 agreement, authenticated or otherwise, with Ms. Hagh's
20 participation or signature or otherwise before the Court. But
21 if Your Honor would like to hear evidence on the two -- second
22 and third issues, the waiver and the lack of arbitration
23 provision, we can put on evidence, or I'm happy to move on at
24 this point.

25 THE COURT: Okay. Anything from the trustee before

1 we -- since the trustee started this by bringing it from state
2 court to district court, and then it meanders its way here to
3 bankruptcy court.

4 MR. YOUNG: Guilty as charged, Your Honor. Phillip
5 Young on behalf of the trustee, and I really just wanted to
6 address one issue that the Court raised briefly: that is,
7 there is jurisdiction here because there is a bankruptcy estate
8 involved. There's a pot of money to which three parties claim
9 entitlement: Ms. Hagh claims entitlement, Mr. Cummings claims
10 entitlement, and the bankruptcy estate claims entitlement.

11 I do believe that if those proceeded in different
12 forums you could end up with very conflicting results. For
13 example, what if this Court said the estate was entitled to 100
14 percent? Then what is the other court deciding, for example?
15 That's an extreme example, but illustrative, nonetheless.

16 To the Court's question about how the interplay
17 between this and the other adversary proceedings, that's really
18 what I wanted to speak to. We removed this to this Court
19 because we think they're closely related. In the other
20 adversary proceeding, the trustee included, in the list of
21 cases to which she's entitled to the accounts receivable, this
22 case. This fee is listed in that other adversary proceeding.
23 We think these two need to proceed side by side for judicial
24 efficiencies.

25 Now obviously, there are other issues as between

1 these two clients that maybe the trustee is not directly
2 involved in, but the ultimate determination needs to be
3 decided, in our view, with the other adversary proceeding,
4 wherever that is, whenever that is.

5 And so that's the trustee's position because we think
6 this is actually integral to that other matter and highly
7 related to that other matter.

8 THE COURT: Okay.

9 MR. YOUNG: That's all I've got, unless the Court has
10 questions for me.

11 THE COURT: Nope, thank you.

12 MR. YOUNG: Thank you.

13 MR. SPRAGENS: Just to respond to a couple of points,
14 Your Honor. With respect to whether bankruptcy jurisdiction
15 should trump the Federal Arbitration Act in this particular
16 instance, that Fourth Circuit that Ms. Tipping pointed the
17 Court to, the basis for finding that bankruptcy jurisdiction
18 should trump the FAA is that it would substantially interfere
19 with the reorganization of the debtor.

20 Here, I don't think there is that risk, and frankly,
21 I think efficiency, counsel's in favor of going to arbitration
22 as required by the contract and letting the arbitrator, the
23 binding arbitration decide who's entitled to what.

24 If there's some dispute about moving the money around
25 at that point, then obviously, the trustee has plenty of tools

1 at her disposal to get relief from this Court. But the
2 arbitrator is the one who's entrusted with this decision, and
3 there's no reason that the arbitrator couldn't make that
4 decision instead of bringing this into the bankruptcy and
5 turning it into a parallel or sequential or something adversary
6 proceeding. So my view is efficiency favors arbitration.

7 The only other point I really wanted to address, Your
8 Honor, is Ms. Tipping's argument that Ms. Hagh somehow sat on
9 her rights and has waived her right to arbitration. To the
10 extent the Court considers the exhibits that were filed along
11 with the motion and the exhibits that were filed with the
12 response, there's a long history of Mr. Price contacting
13 Ms. Hagh to ask about whether arbitration -- whether she would
14 be invoking arbitration, and her response was always: what
15 claims are you talking about; what claims are you bring; what
16 is the nature of this. Because number one, she needed to
17 evaluate and advise Mr. Keefer about whether there was going to
18 be an arbitration about this contract, and number two, she
19 needed to determine if she had a conflict with her client
20 because, obviously, the further this goes, the more possibility
21 there becomes of a conflict between the client and the
22 attorney. So she responded to those emails and asked for more
23 information about the claims, and that information wasn't
24 forthcoming.

25 With respect to saying that this was a separate

1 dispute that needed to be brought separately, Ms. Hagh did say
2 that in the context of the medical malpractice case and an
3 attempt to enforce an attorney's lien in the medical
4 malpractice case, she said in front of Judge Joe Binkley, no,
5 this is not for this Court to decide; this would have to be a
6 separate proceeding. And of course, that proceeding is a
7 mediation and, if unsuccessful, an arbitration. So in our
8 view, she certainly didn't sit on her rights there.

9 I think that's all I have in response to their
10 points, Your Honor.

11 THE COURT: Okay. No, thank you. Yeah.

12 MR. SPRAGENS: Thank you.

13 THE COURT: All right. If you're ready, proceed with
14 your evidence.

15 MS. TIPPING: Okay. Thank you, Your Honor.

16 MR. SPRAGENS: Would you like me to wait until an
17 exhibit is used to make an objection to the use of the
18 exhibits? Or should we -- I mean, it's all the exhibits.

19 THE COURT: So here's what I just noticed, right? So
20 you're relying on documents that were filed in your motion, and
21 you have not uploaded a witness and exhibit list. Counsel's
22 relying on documents that were just uploaded.

23 The Court will entertain the evidence as presented.
24 If you have a substantive objection to that evidence, raise it.
25 You can go ahead and lodge your overall objection, if you have

1 one, right now.

2 But it seems as if the Court is going to consider --
3 the Court will make a determination as we go as to, obviously,
4 the substance of the exhibits, but given the fact that the
5 exhibits were uploaded, unless there's a substantive objection,
6 the Court will likely consider. But I'll leave that to you on
7 if you want to lodge your objection now or as we go.

8 MR. SPRAGENS: Sure, Your Honor. I'll just object to
9 using any exhibits that were just uploaded at about 11 o'clock
10 today.

11 THE COURT: Okay.

12 MS. TIPPING: Your Honor, in light of the fact that
13 there's no arbitration contract before the Court and there's
14 certainly nothing related to Defendant Hagh requiring
15 arbitration with Defendant Hagh [sic], we are going to rest on
16 the arguments that have been made at this point and ask the
17 Court to rule based on the evidence that's before you.

18 THE COURT: Okay.

19 MR. SPRAGENS: Thank you, Your Honor. We're relying
20 on our papers and the exhibits thereto.

21 THE COURT: All right. The Court will take a five-
22 minute recess. Or it may not be five minutes; the Court will
23 take a recess. How about that?

24 THE CLERK: All rise.

25 (Recess taken at 12:08 p.m.)

1 (Proceedings resumed at 12:59 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Take your seats. All right. Thank you,
4 Counsel, for your argument. Court's ready to rule, and I'll be
5 reading an oral ruling at this time on the motion to dismiss.

6 This matter is before the Court on the motion to
7 dismiss brought by Defendants Bretton Keefer and Afsoon Hagh.
8 Counsel for the movants represented that he would rely on his
9 motion and argument and presented no evidentiary support for
10 his position that this case should be dismissed for lack of
11 subject-matter jurisdiction and lack of personal jurisdiction,
12 as well as the alternative request seeking arbitration.

13 He failed to file a witness and exhibit list and,
14 instead, sought the Court's judicial notice of documents
15 attached to his motion and to the amended complaint.

16 Court declines judicial notice of documents that have
17 not been authenticated through the evidentiary process.

18 Movants argue that this Court lacks jurisdiction
19 based on an arbitration clause in an agreement between
20 Defendant Keefer and the plaintiff. As there is no such
21 agreement between plaintiff and Defendant Hagh, the argument on
22 her behalf is particularly lacking.

23 The very purpose of bankruptcy is to modify the
24 rights of debtors and creditors, and Congress intended to
25 centralize disputes about a debtor's assets and legal

1 obligations in the bankruptcy courts, and arbitration is
2 inconsistent with centralization of these decisions because
3 permitting an arbitrator to decide a core or noncore issue
4 would make debtor-creditor rights contingent upon an
5 arbitrator's ruling, rather than the ruling of the bankruptcy
6 judge assigned to hear the debtor's case. And I am citing
7 Phillips v. Congleton, 403 F.3d 164 (4th Cir. 2005).

8 Bankruptcy courts consider the following factors in
9 determining whether to compel or deny an arbitration request:

10 First, whether the arbitration proceeding was
11 commenced prepetition. It was not in this instance.

12 Whether the party seeking arbitration has formally
13 appeared in the bankruptcy case.

14 Three, whether the arbitrator has special knowledge
15 or expertise which would be helpful to the resolution of
16 disputed issues. No arbitrator is appointed because no
17 arbitration has been commenced.

18 Number four, whether there is a strong likelihood
19 that the debtor will confirm a plan, which is inapplicable.

20 Number five, there is an international arbitration
21 agreement provision; there is not.

22 But of particular significance here are factors six
23 and seven: six, the likelihood of piecemeal litigation.
24 Significant likelihood exists.

25 And seven, what impact resolution of the issue will

1 have on the bankruptcy estate: potentially very significant in
2 this instance. And that list comes from B.J. Wade and also In
3 re Nukote from right here in the Middle District of Tennessee.

4 So factors six and seven carry the day and outweigh
5 all other issues.

6 Moreover, on March 13, 2023, the District Court from
7 the Middle District of Tennessee referred this case to the
8 bankruptcy court on the unopposed motion of the Chapter 7
9 trustee. The plaintiff's claims are directly related to the
10 administration of the main bankruptcy case, as well as the
11 trustee's claim in her related adversary proceeding.

12 Moreover, Section 105 of the Bankruptcy Code
13 authorizes the Court to issue any order, process, or judgment
14 that is necessary or appropriate to carry out the provisions of
15 this title.

16 The Court determines that it is fundamentally
17 accepted that request for arbitration be denied when the
18 arbitration would frustrate the purpose of the Bankruptcy Code
19 and this Court's ability to retain jurisdiction over the
20 bankruptcy process.

21 For those reasons, the motion to dismiss is denied.

22 If I could get an order to that effect, incorporating
23 the findings and reasoning that I've just announced orally?

24 MS. TIPPING: Yes, Your Honor.

25 THE COURT: All right. Any other questions from

1 counsel?

2 MR. SPRAGENS: No, Your Honor.

3 THE COURT: All right. The one thing the Court will
4 do, since there is a collateral case, we're going to set this
5 out to January of '24, effectively, for an updated status, and
6 hopefully by that time, the case will be returned from the --
7 the other case will come back from the district court, or we'll
8 know that that piece is no longer before this Court. So we'll
9 have some certainty, hopefully. So plan on January of '24
10 being the next time you'll be here in front of me before -- on
11 this matter.

12 MS. TIPPING: Thank you, Your Honor.

13 THE COURT: All right?

14 MR. SPRAGENS: Thank you, Your Honor.

15 THE COURT: Thank you. Court will be adjourned.

16 THE CLERK: All rise.

17 (Proceedings concluded at 1:06 p.m.)

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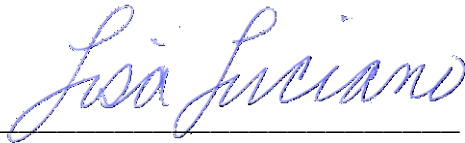
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C E R T I F I C A T I O N

I, Lisa Luciano, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, to the best of my ability.



LISA LUCIANO, AAERT NO. 327

DATE: October 13, 2023

ACCESS TRANSCRIPTS, LLC